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Travelers Casualty & Surety Company of America  
(on bond no. 105707041)

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

THE ERECTION COMPANY, INC., a  
Washington Corporation,,

Plaintiff,

vs.

ARCHER WESTERN CONTRACTORS,  
LLC, a Delaware foreign limited-liability  
company; POSTEL ERECTION GROUP,  
LLC, a domestic limited liability company;  
POSTEL WEST, INC., an Arizona  
corporation; POSTEL INDUSTRIES, INC., an  
unknown entity; TRAVELERS CASUALTY  
AND SURETY COMPANY OF AMERICA;  
DOES I through X; ROES XI through XX,

Defendants.

AND RELATED ACTIONS.

Case No. 2:12-cv-00612-MMD-NJK

**STIPULATION AND ORDER TO  
EXCUSE TRAVELERS CASUALTY &  
SURETY COMPANY OF AMERICA  
FROM ATTENDANCE AT TRIAL**

**DATE OF TRIAL: 12/8/2015**

**TIME OF TRIAL: 9:00 A.M.**

The Erection Company, Inc., ("TEC"), Archer Western Contractors, LLC ("Archer Western"), Travelers Casualty & Surety Company of America ("Travelers/TEC") on Payment and Performance Bond No. 105707041 in the penal amount of \$1,609,970.00 ("TEC Bond") and Travelers Casualty & Surety Company of America ("Travelers/AW") on Payment Bond and Performance Bond, both no. 105478077 and in the penal amount of \$40,229,000.00 (collectively "AW Bond"), by and through their respective undersigned counsel of record, hereby stipulate as follows:

1           1.       This action involves disputed claims for payment and damages between TEC and  
2 Archer Western in connection with the construction of a new control tower at McCarran  
3 International Airport in Las Vegas, Nevada ("Project").

4           2.       Travelers/AW issued the AW Bond on behalf of Archer Western in connection  
5 with its work on the Project.

6           3.       Travelers/TEC issued the TEC Bond on behalf of TEC in connection with its work  
7 on the Project.

8           4.       Archer Western seeks an award of damages against both TEC and  
9 Travelers/TEC's TEC Bond in the instant action. TEC and Travelers/TEC deny any and all  
10 liability on the TEC Bond, or otherwise, for Archer Western's claims.

11           5.       TEC seeks an award of damages against both AW and Travelers/AW's AW Bond  
12 in the instant action. Archer Western and Travelers/AW deny any and all liability on the AW  
13 Bond, or otherwise, for TEC's claims.

14           6.       Trial in the instant action has been bifurcated by the Court into two phases: Phase  
15 1 pertaining to liability; and Phase 2 pertaining to damages. (Dkt. no. 259). Trial of Phase 1 is  
16 scheduled to commence on December 8, 2015. (Dkt. no. 276).

17           7.       The interests of Travelers/AW and Travelers/TEC with respect to the subject  
18 dispute appear to be aligned with Archer Western and TEC, respectively. Travelers/AW  
19 reserves all of its rights under all applicable agreement(s) of indemnity with AW and  
20 Travelers/TEC reserves all of its rights under all applicable agreement(s) of indemnity with TEC.

21           8.       The parties agree that, given their aligned interests and for economic reasons,  
22 Travelers/AW and Travelers/TEC need not attend Phase 1 and/or Phase 2 of the trial if  
23 Travelers/AW and Travelers/TEC agree to be bound by the Court's rulings, orders, findings and  
24 determinations.

25           9.       Travelers/AW and Travelers/TEC have agreed to not attend trial and agree to be  
26 bound by the Court's rulings, orders, findings and determinations with the following caveats:

27           A.       Travelers/AW and Travelers/TEC can elect to attend and actively  
28 participate in Phase 1 and/or Phase 2 of the trial at their respective sole discretion;

1           B.     The parties agree that Travelers/AW and the AW Bond and Travelers/TEC  
2 and the TEC Bond are not liable for any claims of lost profits asserted by Archer Western and/or  
3 TEC in the instant action;

4           C.     Travelers/AW's potential liability under the AW Bond is limited to the  
5 penal amount of the bond (\$40,229,000.00) for any and all alleged damages asserted by TEC in  
6 the instant action, including principal and, interest. However, TEC reserves the right to assert that  
7 the penal amount of the AW Bond does not limit TEC's potential award of attorney's fees and  
8 court costs against Travelers/AW and Travelers/AW reserves the right to contest that assertion;

9           D.     Travelers/TEC's potential liability under the TEC Bond is limited to the  
10 penal amount of the bond (\$1,609,970.00) for any and all alleged damages asserted by AW in the  
11 instant action, including principal and interest. However, AW reserves the right to assert that the  
12 penal amount of the TEC Bond does not limit AW's potential award of attorney's fees and court  
13 costs against Travelers/TEC and Travelers/TEC reserves the right to contest that assertion, and

14           E.     The parties stipulate to the admissibility of the AW Bond and the TEC  
15 Bond at trial (both Phase I and Phase 2) for all purposes

16           ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES  
17 THAT:

18           1.     Travelers/AW and Travelers/TEC need not attend trial of the instant matter but  
19 will nevertheless be bound by the Court's orders, rulings, findings and determinations issued in  
20 the instant matter with the following caveats:

21           A.     Travelers/AW and Travelers/TEC can elect to attend and actively  
22 participate in Phase 1 and/or Phase 2 of the trial at their respective sole discretion;

23           B.     Travelers/AW and the AW Bond and Travelers/TEC and the TEC Bond are  
24 not liable for any claims of lost profits asserted by Archer Western and/or TEC in the instant  
25 action;

26           C.     Travelers/AW's potential liability under the AW Bond is limited to the  
27 penal amount of the bond (\$40,229,000.00) for any and all alleged damages asserted by TEC,  
28 including principal and interest. However, TEC reserves the right to assert that the penal amount

of the AW Bond does not limit TEC's potential award of attorney's fees and court costs against Travelers/AW and Travelers/AW reserves the right to contest that assertion;

D. Travelers/TEC's potential liability under the TEC Bond is limited to the penal amount of the bond (\$1,609,970.00) for any and all alleged damages asserted by AW, including principal and interest. However, AW reserves the right to assert that the penal amount of the TEC Bond does not limit AW's potential award of attorney's fees and court costs against Travelers/TEC and Travelers/TEC reserves the right to contest that assertion; and

E. The parties stipulate to the admissibility of the AW Bond and the TEC Bond at trial (both Phase I and Phase 2) for all purposes.

DATED this 4 day of December, 2015.

WATT, TIEDER, HOFFAR &  
FITZGERALD, L.L.P.

/s/ David R. Johnson

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### ORDER

IT IS SO ORDERED:



United States District Court Judge

December 4, 2015

Dated: \_\_\_\_\_